



# International Acquisition and Contractors on the Battlefield

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## **Specialty Metals Background-**

- **Oct 17 06 - National Defense Authorization Act for FY 2007 (Pub. L. 109-3564), Section 842 - Established a new specialty metals provision at 10 U.S.C. 2533b**
- **Dec 6 06 - Class Deviation 2006-00004 - Section 842.**
- **Oct 26 07 - Class Deviation 2007-00011 - Waiver of Specialty Metals Restriction for Acquisition of COTS Items**
- **Nov 8 07 - DFARS Case 2007-D013 final rule-**
  - **- Creates DFARS 212.570, applicability of certain laws to contracts and subcontracts for COTS items and**
  - **- Adds 10 U.S.C. 2533b to the list of laws inapplicable to acquisition of COTS.**
- **Jan 28 08 - National Defense Authorization Act for FY 2008 (Pub. L. 109-364), Sec. 842.**
- **Jan 29 08 - Class Deviation 2008-00002, Implementation of New Specialty Metals Restriction. Replaces prior deviations.**



## Case Title: Restriction on Acquisition of Specialty Metals (DFARS Case 2008-D003)

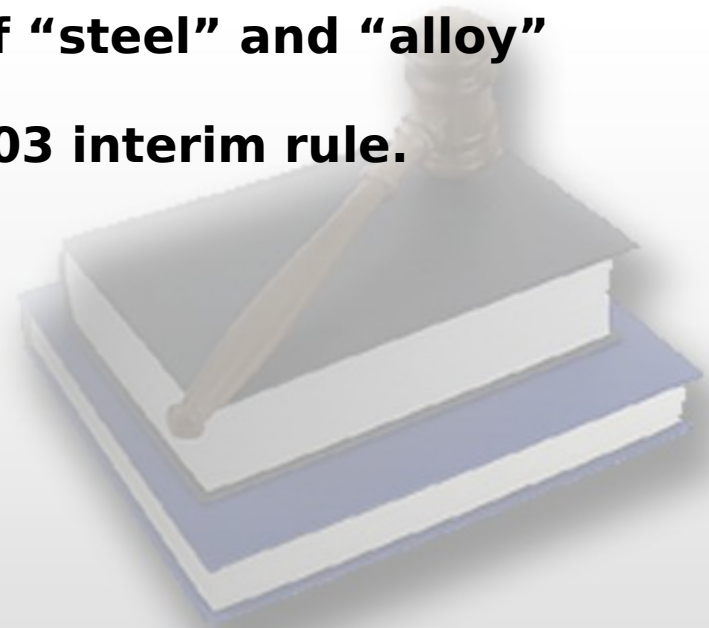
- ▶ **Type: Interim rule**
- ▶ There are limitations on exception for COTS items
  - Restrictions on application to specialty metals raw stock, forgings, castings, high performance magnets, fasteners.
- ▶ **Provides market basket approach for fasteners that are commercial items.**
- ▶ **New definition of “required form” and other requirements for DNADs.**
- ▶ **Exempts all electronic components.**
- ▶ **Provides 2 percent de minimus exception.**
- ▶ **Streamlined compliance for Commercial Derivative Military Articles**
- ▶ **National security waiver**





# Case Title: Definitions relating to Specialty Metals (DFARS Case 2006-D038)

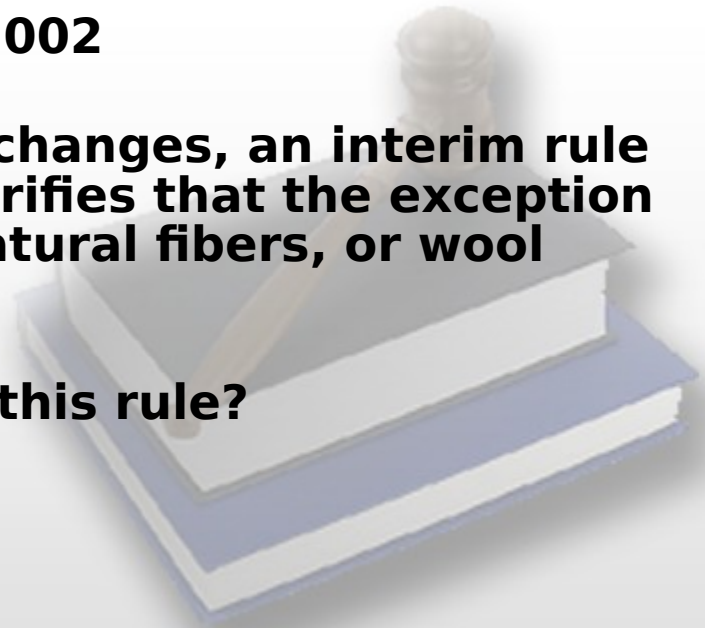
- ▶ **Type: Proposed rule**
- ▶ **Synopsis of rule - proposed definitions of “steel” and “alloy”**
- ▶ **To be published at same time as 2008-D003 interim rule.**





## Case Title: Codification and Modification of Berry Amendment (DFARS Case 2002-D002)

- ▶ **Type: Final rule**
- ▶ **Source - Section 832 of the NDAA for FY 2002**
- ▶ **Synopsis of rule - Adopted as final, with changes, an interim rule that was published on April 26, 2004. Clarifies that the exception for incidental amounts of cotton, other natural fibers, or wool does not apply to the end item.**
- ▶ **Why did it take almost 4 years to finalize this rule?**
  - OIRA
  - Department of Commerce
  - Definition of “item of Individual equipment”







## **Case Title: Prohibition on Acquisition from Communist Chinese Military Companies**

**(DEARS Case 2006-D007)**

- ▶ **Type:** Interim rule published 9/8/2006 (1 response)  
Final rule - 3/27/2007
- ▶ **Source:** Section 1211 of the National Defense Authorization Act for  
FY 2006 (Pub. L. 109-163).
- ▶ **Synopsis of rule:**
  - **Prohibits DoD from acquiring U.S. Munitions List items from Communist Chinese military companies.**
  - **Does not apply to components and parts of covered items unless the components and parts are themselves covered by the U.S. Munitions List.**
  - **Exceptions: Supplies or services acquired—**  
In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;  
for testing purposes; or for the purposes of gathering intelligence.





## **Case Title: Reporting of Purchases from Overseas Sources (FAR Case 2005-034 and PGI Case 0000-P068)**

- ▶ **Type: Interim rule published 9/28/2006 (1 response to the proposed rule - did not suggest any change to the rule)  
Final rule published 8/17/2007**
- ▶ **Source: 41 U.S.C. 10a (as amended by Section 8306 of Pub. L. 110-28), and several prior consolidated appropriations acts.**
  - Each Federal agency must report to Congress - dollar value of acquisitions of supplies that are manufactured outside the U.S. (no component test)
  - Itemized list of all waivers granted for such supplies under the Buy American Act.
  - Summary of total procurement funds spent on goods manufactured in the U.S.
- ▶ **Synopsis of rule: Add a solicitation provision, when acquiring manufactured end products, to collect data from offeror on whether end products manufactured predominantly in the U.S. or outside the U.S.**
- ▶ **FPDS requirements:**
  - Modify FPDS to collect data on whether end products manufactured in the U.S. or outside the U.S. and, if outside the U.S., reason for such acquisition.
  - Instruction to contracting officer.
  - Provide uniform report format for use by all agencies.



## **Case Title: Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission (FAR Case 2005-011)**

- ▶ **Type: Proposed rule published Jul 18 06. (6 responses to the FAR rule, 10 responses to the related DFARS rule.  
Final rule published Feb 28 08  
Effective date - March 31, 2008.**
- ▶ **Source: Before clearance of the final rule under DFARS rule 2003-D087, Contractor Personnel Supporting a Force Deployed outside the U.S., OIRA requested that DoD cooperate with State Department to come up with FAR rule to cover other contractors in the high risk areas.**
- ▶ **Synopsis of rule: Address the issues of Contractor personnel that are providing support to a mission of the U.S. Government in a high risk area- whether civilian or military, but not authorized to accompany the U.S. Armed Forces.  
Areas of controversy - Should contractors carry weapons?  
What is their right to use deadly force?  
Are private security contractors mercenaries?**
- ▶ **Class Deviation 2007-00010, Implementation of the Synchronized Predeployment and Operational Tracker to Account for Contractor Personnel Performing in the USCENTOM. Implements a version of the FAR clause and SPOT throughout CENTCOM.**





## **Case Title: Contractor Personnel Authorized to Accompany the U.S. Armed Forces Deployed outside the United States (FAR Case 2005-D013)**

- ▶ **Type: Interim rule published Proposed rule published Jun 16 06.  
(10 responses to the DFARS rule, 6 responses to the related FAR rule)  
Final rule to be published March 31 08 (to coincide with effective date | of FAR rule)**
- ▶ **Source: DoDI 3020.41 and various statutory provisions.**
- ▶ **Synopsis of rule: Address the issues of Contractor personnel that are authorized to accompany the U.S. Armed Forces.**
- ▶ **Areas of controversy - Should contractors carry weapons?  
What is their right to use deadly force?  
Are private security contractors mercenaries?**
- ▶ **Class Deviation 2007-00004 - Specifies SPOT as the system to be used to collect data on contractor personnel.  
Will be superseded by final DFARS rule.**